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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

In re J.H. et al., Persons Coming Under the
Juvenile Court Law.

B210613
(Los Angeles County
Super. Ct. No. CK 68293)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent,

v.

RUBY T.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of Los Angeles County. Steven L. Berman, Referee. Affirmed.

Amy Z. Tobin, under appointment by the Court of Appeal for Appellant Ruby T.

Raymond G. Fortner, Jr., County Counsel, James M. Owens, Assistant County Counsel, Melinda White Svec, Deputy County Counsel, for Respondent Los Angeles County Department of Children and Family Services.

Mother Ruby T. appeals from the dependency court's order terminating her parental rights to her child M.O. and awarding custody to M.O.'s father. She contends the trial court erred in failing to make a finding under Welfare and Institutions Code section 361.2¹ whether there was a need for continued supervision. We affirm.

FACTUAL BACKGROUND AND PROCEDURAL HISTORY

This is the third appeal in this matter. Previously, we affirmed the trial court's summary denial of four section 388 petitions. (*In re J.H.* (November 12, 2008, B206980) [nonpub. opn.]; *In re J.H.* (February 11, 2009, B209049) [nonpub. opn.])

1. Prior Appeals.

(a) APPEAL IN NO. B206980.

Ruby T. is the mother of two girls, V.S. (born 1993) and J.H. (born 1996), and a boy, M.O. (born 2004). On April 27, 2007, the Department received a referral alleging that Mother physically and emotionally abused J.H.

On May 1, 2007, the Department of Children and Family Services (the Department) interviewed the children's maternal grandmother, who told the social worker she was concerned about Mother's treatment of the children. At the time, Mother, J.H. and M.O. had been living with Mother's mother for two weeks. V.S. had been residing with her grandmother since birth because Mother had left her with the grandmother when she was a week old; the grandmother was V.S.'s legal guardian.

The grandmother told the social worker that Mother had been irresponsible all of her adult life, was unable to maintain a job, and moved every one to two months because she failed to pay her rent. J.H. told the social worker she was afraid of Mother, and that Mother yelled at her on a regular basis. Mother used profanity and hit J.H. with a shoe on her back, arms, legs, and buttocks. J.H. explained that Mother became angry when J.H. did not take care of her brother M.O. when Mother was watching television or talking on her cell phone.

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All statutory references herein, unless otherwise noted, are to the Welfare and Institutions Code.

J.H. stated that her grandmother intervened when Mother mistreated her, and that she felt safe with her grandmother.

The Department concluded that the children's safety was an immediate concern. Mother had failed to sustain a permanent, stable home for the children, and moved from home to home, disrupting J.H.'s school attendance; Mother had been dishonest about her mental health history and substance abuse; Mother lacked insight into her own behavior and lack of responsibility; and she displayed a pattern of abandoning her children.

A section 300 petition filed May 29, 2007, alleged that Mother physically and emotionally abused the children. (§ 300, subds. (a), (b), (c) and (j).) The Department's detention report recommended that the children remain placed with their grandmother. At the May 29, 2007 detention hearing, the court ordered the children detained. The court ordered Mother to take domestic violence classes (a 52-week batterer's program), parenting, counseling (addressing all case issues), random drug and alcohol testing, and alcohol rehabilitation. The court ordered individual counseling for J.H.

The Department's jurisdictional and disposition report stated that the children remained with their grandmother. Mother had been visiting the children once a week. She was sharing an apartment with a friend and was employed at Ross. Mother denied using drugs. Mother told the social worker she had married M.O.'s father Juan² in 2002, but they had separated in December 2006. Juan, who was living in Mexico, was employed in the produce business, and wanted his son to reside with him in Mexico.

Following mediation, at the continued August 20, 2007 jurisdictional and disposition hearing, Mother submitted to an amended petition, and agreed to parenting education, alcohol and drug abuse counseling, monitored visitation, and counseling for J.H. The court ordered Mother into a drug and alcohol program, weekly testing, rehabilitation, parenting education, joint counseling with J.H., and counseling to address case issues including a

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The court found Juan Manuel O. to be the presumed father of M.O. It also found Lorenzo H. to be the presumed father of V.S. and J.H. Lorenzo H. did not participate in the dependency proceedings.

psychiatric evaluation. The court noted that mother had finished her 12-week parenting classes, and ordered the Department to determine the appropriateness of placing M.O. with his father Juan.

The status review report for the February 15, 2008 six-month review hearing stated that J.H. and M.O. remained placed with their grandmother. J.H. told the social worker she did not want to be returned to Mother, nor did she want unmonitored visitation with Mother. Mother had recently enrolled in a counseling program, and showed a “high interest” in reunifying with her children. However, Mother was guarded about her mental health issues, and denied that she had problems. Although the home study on M.O.’s father had been completed, the Department did not recommend that M.O. be placed with him at this point because Mother had shown progress in complying with her treatment plan.

The report noted that in August 2007, Mother had enrolled in a six-month substance abuse program, and was testing weekly. She had submitted 21 negative tests, but had failed to test on three occasions. Mother had enrolled in individual counseling on February 7, 2008, and a psychiatric evaluation of Mother disclosed that Mother was “within normal limits;” she had not been prescribed any medication. However, the report noted that Mother might suffer from a mood disorder or bipolar disorder. Mother visited with J.H. and M.O. twice weekly at their grandmother’s home, and based on her progress, Mother’s visits had been liberalized from monitored to unmonitored in placement only. Nonetheless, J.H. told the social worker she did not want unmonitored visits with Mother, and that she feared Mother would abscond with M.O. Mother’s interaction with the children at the visits was poor. The Department reported that Mother was making progress in complying with her case plan, and “[o]verall the mother is working toward meeting her treatment goals and overcoming past issues that initially led the family to have DCFS intervention.”

At the February 15, 2008 hearing, the court stated it was considering placing M.O. with his father. Mother informed the court she was making progress in her programs, and had completed her parenting class, six sessions of individual counseling, 60 sessions of AA, and had been visiting the children. The court found Mother in partial compliance, noting that she needed four or five more months of reunification services; it ordered her to continue

testing and continue her domestic violence and anger management courses. The court ordered M.O. released to his father's custody, and set a review hearing for May 27, 2008.

On February 18, 2008, Juan O. informed the Department he would take custody of M.O., pending issuance of a passport, so that they could return to Mexico. On March 11, 2008, Mother filed a section 388 petition seeking return of M.O. and J.H., alleging she had complied with her case plan. Mother further alleged that the children would benefit by being returned to her because the children had a close bond and should be considered a sibling group. She alleged that if M.O. were returned to Mexico, the siblings would be separated; furthermore, M.O. had a closer relationship with Mother than he did with his father. The dependency court summarily denied the petition on the grounds it did not state any new evidence or changed circumstances since the last hearing on February 15, 2008.

On March 21, 2008, Mother filed another section 388 petition seeking return of J.H. and M.O., alleging that M.O. would be emotionally hurt by a return to Mexico; she was willing to support her children; and she was working, could provide a stable home, and was attending church every Sunday. The dependency court summarily denied the petition because it did not state facts supporting the request, and the request did not set forth new evidence or changed circumstances.

On November 12, 2008, we affirmed both orders.

(b) APPEAL IN NO. B209049.

Subsequent to the denial of Mother's section 388 petitions, the Department reported for the May 21, 2008 hearings (a section 364 with respect to M.O., and the 12-month review hearing with respect to J.H.) that as of the writing of the report, the Department had not yet placed M.O. with Juan, despite the court's order of February 28, 2008 because the maternal grandmother had been unable to get M.O.'s birth certificate certified to facilitate his transfer to Juan in Mexico. Mother continued to test negative for drug use,³ and had been psychiatrically evaluated three times and found to be "within normal limits" each time.

³ Mother had one test indicating the presence of morphine and opiates, and contended it was likely from taking Tylenol with Codeine for pain.

Mother had stopped attending individual counseling, but had been making good progress participating in anger management and victims of domestic violence counseling. Mother continued to have twice weekly visits of two to three hours each with the children at the grandmother's home. However, the quality of the visits was not good as Mother did not interact with the children appropriately.

At the hearing, the dependency court noted that Juan had not been able to obtain M.O.'s passport. Further, there appeared to be issues with Mother's counseling. The court found Mother in partial compliance with her case plan. The court set a section 366.22 hearing for November 19, 2008, and continued the section 364 hearing on M.O. until June 12, 2008.

On May 27, 2008, Mother filed a section 388 petition seeking return of M.O. to her mother's custody on the grounds that M.O. would have better educational opportunities in the United States. The dependency court summarily denied the petition because the petition did not state changed circumstances, and Juan was non-offending and wanted custody.

On June 3, 2008, Mother filed a second section 388 petition, seeking to return M.O. to Grandmother's custody, alleging that moving M.O. to a "third-world country where poverty, disease and crime are rampant, is not in the minor's best interest[s]," and alleged that Juan had a history of violence and alcoholism. The court summarily denied the petition because it did not state new or changed circumstances.

On February 11, 2009, we affirmed the dependency court's orders.

2. Current Appeal.

Subsequent to the denial of Mother's section 388 petitions, the Department's report prepared for the June 12, 2008 interim review hearing stated that Juan had obtained M.O.'s passport, but needed to wait to travel to Mexico until the grandmother could take M.O. on June 27, 2008. The court continued M.O.'s section 364 hearing to July 18, 2008.

The Department's report prepared for the July 18, 2008 hearing stated that M.O. was residing with his father Juan in Mexico. M.O.'s grandmother reported no problems during the travel. Juan advised the Department that he understood it would take M.O.

some time to adjust to his new living situation, but that he would make sure all of M.O.'s needs were met. The Department recommended that dependency court jurisdiction over M.O. be terminated because the Department had no jurisdiction over a child residing in Mexico.

At the July 18, 2008 hearing, the court stated, "this is a [section] 364 as to [M.O]." Mother informed the court she was making progress in her programs. She was enrolled in joint counseling, and voluntarily attending A.A. The court indicated it would terminate jurisdiction over M.O. because he was in Mexico. The court noted that when it ordered M.O. placed with his father, it issued a seven-day stay of the order for the purposes of Mother taking an appeal; however, Mother had not appealed. The court ordered monitored visitation, found conditions did not exist that justified the court taking jurisdiction, and terminated jurisdiction pursuant to section 361.2. The court stayed its order until July 22, 2008, pending receipt of the order from family court granting Juan sole legal and physical custody of M.O.; on that date, the order became final.

DISCUSSION

Mother contends that reversal is required because the dependency court applied the incorrect standard in terminating jurisdiction in applying section 364 rather than section 361.2, and in failing to assess under section 361.2 whether there was a need for continuing supervision. We disagree.

Section 364 applies to proceedings where jurisdiction under section 300 is appropriate, but the child is not removed from the parent's custody. (§ 364, subd. (a); *In re Janee W.* (2006) 140 Cal.App.4th 1444, 1450-1451.) Because M.O. did not live with Juan when he was first detained, the applicable provision is section 361.2, which provides for placement with a non-custodial parent unless doing so poses a risk of harm to the child. (§ 361.2, subd. (a).) After the court has placed a child with a non-custodial parent, it may either (1) terminate jurisdiction over the child, or (2) place the child with the non-

custodial parent and order reunification services for the parent from whom the child is removed. (§ 361.2, subd. (b)(1), (3); *In re Janee W.*, *supra*, 140 Cal.App.4th at p. 1451.)⁴

Where the court terminates jurisdiction, it must decide whether there is a need for continuing supervision. (*In re Sarah M.* (1991) 233 Cal.App.3d 1486, 1493-1494, disapproved on other grounds in *In re Chantal S.* (1996) 13 Cal.4th 196, 204.) We will uphold the court's determination in this regard if supported by substantial evidence. (*In re Sarah M.*, *supra*, 233 Cal.App.3d at p. 1495.) Even if the dependency court purported to apply the different standard of section 364, we will affirm its ruling if the undisputed evidence in the record shows there is no need for continuing supervision. (*Id.* at pp. 1498-1500.)

Here, Mother complains that unlike *Sarah M.*, where the child was placed with her non-offending father for 18 months and the father had provided for the child's needs (*Sarah M.*, *supra*, 233 Cal.App.3d at p. 1499), Juan had no track record of successfully parenting M.O.: The report only indicated that M.O. had successfully travelled to Mexico with his grandmother. Mother argues that because *Sarah M.* noted that the

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Section 361.2 provides in relevant part: “(a) When a court orders removal of a child pursuant to Section 316, the court shall first determine whether there is a parent of the child, with whom the child was not residing at the time that the events or conditions arose that brought the child within the provisions of Section 300, who desires to assume custody of the child. If that parent requests custody, the court shall place the child with the parent unless it finds that placement with that parent would be detrimental to the safety, protection, or physical or emotional well-being of the child. [¶] (b) If the court places the child with that parent it may do any of the following: [¶] (1) Order that the parent become legal and physical custodian of the child. The court may also provide reasonable visitation by the noncustodial parent. The court shall then terminate its jurisdiction over the child. . . . [¶] . . . [¶] (3) Order that the parent assume custody subject to the supervision of the juvenile court. In that case the court may order that reunification services be provided to the parent or guardian from whom the child is being removed, or the court may order that services be provided solely to the parent who is assuming physical custody in order to allow that parent to retain later custody without court supervision, or that services be provided to both parents, in which case the court shall determine, at review hearings held pursuant to Section 366, which parent, if either, shall have custody of the child.”

placement of the child with the formerly non-custodial parent may raise concerns the new custodial parent needs services, the evidence here does not support a finding that there was no need for continued supervision.

We disagree. The undisputed evidence in the record disclosed that Juan was the non-offending parent and had a completed and approved home study prior to M.O.'s placement with him; these factors were the basis for the court's decision. At the time of the July 18, 2008 hearing, the report stated that Juan had assured the Department he would take good care of his son, and grandmother reported the trip to Mexico to place M.O. with Juan had gone well. Mother presented no new evidence to the court that Juan's home was not a suitable placement. This record supports a finding of no need for continued supervision, and we therefore affirm.

DISPOSITION

The order to the superior court is affirmed.

ZELON, J.

We concur:

WOODS, Acting P. J.

JACKSON, J.